

2SHB 1393 - H AMD 290

By Representative Springer

WITHDRAWN 3/11/2009

1 Strike everything after the enacting clause and insert the
2 following:

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4

"PART I. OFFICE OF CONSUMER EDUCATION FOR HOME CONSTRUCTION

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NEW SECTION. **Sec. 1.** A new section is added to chapter 43.10 RCW
to read as follows:

8 (1) The office of consumer education for home construction is
9 created in the office of the attorney general to be the primary point
10 of contact for consumers in matters related to residential purchases
11 and construction.

12 (2) The office of consumer education for home construction shall:

13 (a) Educate consumers about residential purchase and sale
14 agreements and contracting for residential construction services,
15 including the requirements of chapter 18.27 RCW and methods available
16 to protect themselves against loss;

17 (b) Produce written and electronic consumer education materials
18 about purchasing homes, contracting for residential construction
19 services, and legal resources available to consumers;

20 (c) Create a pamphlet explaining a homeowner's legal rights and
21 remedies and provide contractors and other construction professionals
22 with a downloadable version of the pamphlet to attach to contracts for
23 purchase and sale of new residential real property or the substantial
24 remodel of existing residential real property. The office shall
25 periodically update this pamphlet;

26 (d) Identify and work collaboratively with agencies and
27 organizations who are already engaged in consumer education efforts

1 regarding residential purchases and construction, such as the
2 department of labor and industries, the department of licensing, local
3 governments, the construction industry, financial institutions, and
4 other interested organizations and individuals, to increase outreach
5 to consumers;

6 (e) Share consumer education materials with and serve as a
7 resource for agencies and organizations who are already engaged in
8 consumer education;

9 (f) Develop a uniform manner of receiving, cataloging, analyzing,
10 and responding to consumer complaints about residential construction,
11 and develop a system of tracking resolutions of complaints and of
12 claims received under section 8 of this act;

13 (g) Identify which agencies and organizations are already
14 receiving complaints and coordinate with them to ensure that all
15 agencies and organizations are requesting the same information from
16 complaining consumers and that all consumers are referred to the
17 office;

18 (h) Enter into data-sharing agreements with the department of
19 labor and industries, local governments, and other agencies with
20 enforcement duties in residential construction to increase assistance
21 to consumers and enforcement of construction-related laws;

22 (i) Report to the legislature on an annual basis the total number
23 of complaints about residential construction received and the total
24 number of claims filed under section 8 of this act. For complaints,
25 the office of consumer education for home construction shall summarize
26 the nature of the complaints. For claims, the office of consumer
27 education for home construction shall summarize the nature of the
28 claims, the monetary value of the claims, whether claims have been
29 resolved, and any other information that the office deems relevant.
30 The first report is due on January 1, 2010, and subsequent reports are
31 due on November 1st of each year thereafter; and

32 (j) Examine issues involved in establishing a recovery fund to
33 provide compensation to residential real property homeowners through a
34 claim filing process. The office of consumer education for home

1 construction shall consult with appropriate agencies and
2 representatives from organizations involved in the area of residential
3 construction. The office of consumer education for home construction
4 shall make recommendations to the legislature on the creation of a
5 recovery fund by December 1, 2010.

6
7 **Sec. 2.** RCW 18.27.075 and 2001 c 159 s 14 are each amended to
8 read as follows:

9 (1) The department shall charge a fee of one hundred dollars for
10 issuing or renewing a certificate of registration during the 2001-2003
11 biennium. The department shall revise this amount at least once every
12 two years for the purpose of recognizing economic changes as reflected
13 by the fiscal growth factor under chapter 43.135 RCW.

14 (2) The department shall also charge a consumer education fee
15 of one hundred dollars per year for issuing or renewing a
16 certificate of registration. The department shall deposit the fee
17 in the consumer education for home construction account created in
18 section 3 of this act.

19
20 NEW SECTION. **Sec. 3.** A new section is added to chapter 43.10 RCW
21 to read as follows:

22 The consumer education for home construction account is created in
23 the custody of the state treasury for the purpose of funding the
24 office of consumer education for home construction. All fees charged
25 under subsection (2) of section 2 of this act and filing fees charged
26 under section 8 of this act must be deposited into the account.
27 Expenditures from the account may be used only to fund the office of
28 consumer education for home construction. Only the home construction
29 board created under section 6 of this act or the board's designee may
30 authorize expenditure from the account. The account is subject to the
31 allotment procedures under chapter 43.88 RCW, but an appropriation is
32 not required for expenditures.

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1 **Sec. 4.** RCW 43.79A.040 and 2008 c 208 s 9 are each amended to
2 read as follows:

3 (1) Money in the treasurer's trust fund may be deposited,
4 invested, and reinvested by the state treasurer in accordance with RCW
5 43.84.080 in the same manner and to the same extent as if the money
6 were in the state treasury.

7 (2) All income received from investment of the treasurer's trust
8 fund shall be set aside in an account in the treasury trust fund to be
9 known as the investment income account.

10 (3) The investment income account may be utilized for the payment
11 of purchased banking services on behalf of treasurer's trust funds
12 including, but not limited to, depository, safekeeping, and
13 disbursement functions for the state treasurer or affected state
14 agencies. The investment income account is subject in all respects to
15 chapter 43.88 RCW, but no appropriation is required for payments to
16 financial institutions. Payments shall occur prior to distribution of
17 earnings set forth in subsection (4) of this section.

18 (4)(a) Monthly, the state treasurer shall distribute the earnings
19 credited to the investment income account to the state general fund
20 except under (b) and (c) of this subsection.

21 (b) The following accounts and funds shall receive their
22 proportionate share of earnings based upon each account's or fund's
23 average daily balance for the period: The Washington promise
24 scholarship account, the college savings program account, the
25 Washington advanced college tuition payment program account, the
26 agricultural local fund, the American Indian scholarship endowment
27 fund, the foster care scholarship endowment fund, the foster care
28 endowed scholarship trust fund, the students with dependents grant
29 account, the basic health plan self-insurance reserve account, the
30 contract harvesting revolving account, the Washington state combined
31 fund drive account, the commemorative works account, the Washington
32 international exchange scholarship endowment fund, the toll collection
33 account, the developmental disabilities endowment trust fund, the
34 energy account, the fair fund, the family leave insurance account, the

1 food animal veterinarian conditional scholarship account, the fruit
2 and vegetable inspection account, the future teachers conditional
3 scholarship account, the game farm alternative account, the GET ready
4 for math and science scholarship account, the grain inspection
5 revolving fund, the juvenile accountability incentive account, the law
6 enforcement officers' and fire fighters' plan 2 expense fund, the
7 local tourism promotion account, the produce railcar pool account, the
8 regional transportation investment district account, the rural
9 rehabilitation account, the stadium and exhibition center account, the
10 youth athletic facility account, the self-insurance revolving fund,
11 the sulfur dioxide abatement account, the children's trust fund, the
12 Washington horse racing commission Washington bred owners' bonus fund
13 account, the Washington horse racing commission class C purse fund
14 account, the individual development account program account, the
15 Washington horse racing commission operating account (earnings from
16 the Washington horse racing commission operating account must be
17 credited to the Washington horse racing commission class C purse fund
18 account), the life sciences discovery fund, the Washington state
19 heritage center account, the consumer education for home construction
20 account, and the reading achievement account. However, the earnings
21 to be distributed shall first be reduced by the allocation to the
22 state treasurer's service fund pursuant to RCW 43.08.190.

23 (c) The following accounts and funds shall receive eighty percent
24 of their proportionate share of earnings based upon each account's or
25 fund's average daily balance for the period: The advanced right of
26 way revolving fund, the advanced environmental mitigation revolving
27 account, the city and county advance right-of-way revolving fund, the
28 federal narcotics asset forfeitures account, the high occupancy
29 vehicle account, the local rail service assistance account, and the
30 miscellaneous transportation programs account.

31 (5) In conformance with Article II, section 37 of the state
32 Constitution, no trust accounts or funds shall be allocated earnings
33 without the specific affirmative directive of this section.

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1 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.10 RCW
2 to read as follows:

3 For the purposes of sections 6 through 10 of this act, the
4 following definitions apply:

5 (1) "Board" means the home construction board created in section 6
6 of this act.

7 (2) "Claim" means a claim filed with the board against a
8 construction professional under section 8 of this act and does not
9 mean a complaint as that term is used in section 1 of this act.

10 (3) "Construction professional" has the same meaning as in section
11 14 of this act.

12 (4) "Contractor" means a contractor, as defined in RCW 18.27.010,
13 that is registered with the department of labor and industries under
14 chapter 18.27 RCW.

15 (5) "Defect" means a deficiency, an inadequacy or an insufficiency
16 arising out of or relating to the construction, alteration, or repair
17 of residential real property. "Defect" also includes a deficiency, an
18 inadequacy or an insufficiency in a system, component, or material
19 incorporated into residential real property.

20 (6) "Damages" means the cost of repairs, or if the cost of repairs
21 is clearly disproportionate to the loss in market value, damages is
22 the loss in market value.

23 (7) "Homeowner" means a person or persons owning residential real
24 property. "Homeowner" does not include government agencies, political
25 subdivisions, financial institutions, and any other entity that
26 purchases, guarantees, or insures a loan secured by real property.
27 "Homeowner" also does not include the spouse, domestic partner, or
28 personal representative of the contractor named in the claim filed
29 under section 8 of this act.

30 (8) "Residential real property" has the same meaning as in section
31 14 of this act.

32
33 NEW SECTION. **Sec. 6.** A new section is added to chapter 43.10 RCW
34 to read as follows:

1 (1) The home construction board is established within the office
2 of consumer education for home construction to administer a
3 residential real property homeowner and construction professional
4 early resolution mediation program.

5 (2) The purpose of the board is to provide homeowners and
6 construction professionals with a cost-effective and time-efficient
7 process to resolve disputes arising from alleged construction.

8 (3) The board consists of the following seven members:

9 (a) Three members possessing a minimum of ten years of
10 experience in the construction of residences and directly, or as
11 employees or officers of a firm, registered under chapter 18.27 RCW;

12 (b) One member possessing a minimum of ten years of experience
13 in the remodeling of residences and directly, or as employees or
14 officers of a firm, registered under chapter 18.27 RCW;

15 (c) One architect licensed under chapter 18.08 RCW or
16 professional engineer registered under chapter 18.43 RCW;

17 (d) One building inspector employed by a city or county; and

18 (e) One member of the general public.

19 (3) Members of the board shall be appointed by the governor with
20 consent of the Senate. The governor shall appoint initial members
21 of the board to staggered terms of from two to four years.
22 Thereafter, all members shall be appointed to full four-year terms.
23 Members of the board hold office until their successors are
24 appointed. A vacancy shall be filled by appointment by the governor
25 for the unexpired portion of the term in which the vacancy occurs.

26 (4) The board shall select from its members a chair person, vice
27 chair person, and any other officer the board determines is
28 necessary to perform its duties.

29 (5) The board shall meet a minimum of four times per year to carry
30 out its functions.

31 (6) The board may adopt rules to implement the board's duties.

32
33 NEW SECTION. Sec. 7. A new section is added to chapter 43.10 RCW
34 to read as follows:

1 (1) The board shall investigate and mediate claims filed by a
2 homeowner against a construction professional for alleged construction
3 defects to residential real property.

4 (2) The board may use the services of neutral third party experts
5 to assist the board in investigating, assessing, and mediating claims.
6 The board may rely on the national building standards and other
7 recognized standards or codes that the board finds appropriate.

8
9 NEW SECTION. **Sec. 8.** A new section is added to chapter 43.10 RCW
10 to read as follows:

11 (1) A homeowner of residential real property alleging that a
12 construction professional has performed defective work must, prior to
13 commencing an action against the construction professional, file a
14 claim against the construction professional with the board.

15 (2) The claim shall be in the form required by the board, and
16 shall include, at a minimum:

17 (a) The name and mailing address of the homeowner or the
18 homeowner's legal representative, if any;

19 (b) The address and location of the residential real property;

20 (c) The names and addresses of the construction professionals, to
21 the extent known to the homeowner, who performed the work;

22 (d) Whether the work performed involved construction of new
23 residential real property or a substantial remodel of residential real
24 property and the date that the homeowner took possession of the new
25 residential real property or, for a substantial remodel, the date the
26 work was substantially completed or the project was terminated;

27 (e) A description of the defective work performed and the actual
28 or estimated costs of repair;

29 (f) Any report, estimates, and other documents evidencing the
30 defect and the costs of repair;

31 (g) Whether there is a written contract between the construction
32 professional and the homeowner and whether the contract contains
33 warranties related to the work performed or the materials used.

34

1 (3) The board may not process a claim against a construction
2 professional unless the claim is filed with the board within the
3 applicable statute of limitations.

4 (4) When a claim is filed with the board within the applicable
5 statute of limitations, the filing of the claim tolls any applicable
6 statute of limitations and any applicable statute of repose for
7 construction-related claims for the period of time until fifteen days
8 after the board provides written notice of completion of mediation.

9 (5) Any action commenced in court by a homeowner prior to
10 compliance with the requirements of this section shall be subject to
11 dismissal without prejudice, and may not be recommenced until the
12 homeowner has complied with the requirements of this section.

13 (6) The board by rule may impose a processing fee for claims filed
14 under this section not to exceed one hundred dollars. The fee shall
15 be deposited into the consumer education for home construction account
16 created under section 3 of this act.

17
18 NEW SECTION. **Sec. 9.** A new section is added to chapter 43.10 RCW
19 to read as follows:

20 (1) Upon receipt of a claim, the board shall give written notice
21 to the construction professional against whom the claim is made. The
22 notice of the claim shall describe the claim in reasonable detail
23 sufficient to determine the nature of the defect.

24 (2) Within twenty-one days after service of the notice of claim,
25 the construction professional shall serve a written response on the
26 homeowner by registered mail or personal service. The written
27 response shall:

28 (a) Propose to inspect the residence that is the subject of the
29 claim and to complete the inspection within a specified time frame.
30 The proposal shall include the statement that the construction
31 professional shall, based on the inspection, offer to remedy the
32 defect, compromise by payment, or dispute the claim;

33 (b) Offer to compromise and settle the claim by monetary payment
34 without inspection. A construction professional's offer under this

1 subsection (2)(b) to compromise and settle a homeowner's claim may
2 include, but is not limited to, an express offer to purchase the
3 homeowner's residence that is the subject of the claim, and to pay the
4 homeowner's reasonable relocation costs; or

5 (c) State that the construction professional disputes the claim
6 and will neither remedy the defect nor compromise and settle the
7 claim.

8 (3)(a) If the construction professional disputes the claim or does
9 not respond to the notice of claim within the time stated in
10 subsection (2) of this section, the board shall commence an
11 investigation and mediation of the claim.

12 (b) If the homeowner rejects the inspection proposal or the
13 settlement offer made by the construction professional pursuant to
14 subsection (2) of this section, the homeowner shall serve written
15 notice of the rejection on the construction professional and the
16 board. After service of the rejection, the board shall commence an
17 investigation and mediation of the claim.

18 (c) If the construction professional has not received from the
19 homeowner, within thirty days after the homeowner's receipt of the
20 construction professional's response, either an acceptance or
21 rejection of the inspection proposal or settlement offer, then at
22 anytime thereafter the construction professional may terminate the
23 proposal or offer by serving written notice to the homeowner, and the
24 board shall commence an investigation and mediation of the claim.

25 (4)(a) If the homeowner elects to allow the construction
26 professional to inspect in accordance with the construction
27 professional's proposal pursuant to this section, the homeowner shall
28 provide the construction professional and its contractors or other
29 agents reasonable access to the homeowner's residence during normal
30 working hours to inspect the premises and the claimed defect.

31 (b) Within fourteen days following completion of the inspection,
32 the construction professional shall serve on the homeowner:

33 (i) A written offer to remedy the defect at no cost to the
34 homeowner, including a report of the scope of the inspection, the

1 findings and results of the inspection, a description of the
2 additional construction necessary to remedy the defect, and a
3 timetable for the completion of such construction;

4 (ii) A written offer to compromise and settle the claim by
5 monetary payment pursuant to subsection (2)(b) of this section; or

6 (iii) A written statement that the construction professional will
7 not proceed further to remedy the defect.

8 (c) If the construction professional does not proceed further to
9 remedy the defect within the agreed timetable, or if the construction
10 professional fails to comply with the provisions of (b) of this
11 subsection, the homeowner shall provide written notification to the
12 board. The board shall commence an investigation and mediation of the
13 claim.

14 (d) If the homeowner rejects the offer made by the construction
15 professional pursuant to (b)(i) or (ii) of this subsection (4) to
16 either remedy the defect or to compromise and settle the claim by
17 monetary payment, the homeowner shall serve written notice of the
18 rejection on the construction professional and the board. After
19 service of the rejection notice, the board shall commence an
20 investigation and mediation of the claim.

21 (e) If the construction professional has not received from the
22 homeowner, within thirty days after the homeowner's receipt of the
23 construction professional's response, either an acceptance or
24 rejection of the offer made pursuant to (b)(i) or (ii) of this
25 subsection (4), then at anytime thereafter the construction
26 professional may terminate the offer by serving written notice to the
27 homeowner.

28 (5)(a) Any homeowner accepting the offer of a construction
29 professional to remedy the defect pursuant to subsection (4)(b)(i) of
30 this section shall do so by serving the construction professional with
31 a written notice of acceptance within a reasonable time period after
32 receipt of the offer, and no later than thirty days after receipt of
33 the offer. The homeowner shall also send a copy of the written notice
34 of acceptance to the board. The homeowner shall provide the

1 construction professional and its contractors or other agents
2 reasonable access to the homeowner's residence during normal working
3 hours to perform and complete the construction by the timetable stated
4 in the offer.

5 (b) The homeowner and construction professional may, by written
6 mutual agreement, alter the extent of construction or the timetable
7 for completion of construction stated in the offer, including, but not
8 limited to, repair of additional defects.

9 (6) Compliance with this section satisfies the requirements of RCW
10 64.50.020.

11

12 NEW SECTION. **Sec. 10.** A new section is added to chapter 43.10 RCW
13 to read as follows:

14 (1) If, after compliance with the procedures established in
15 section 9 of this act, a resolution has not been reached between the
16 homeowner and construction professional, the board shall investigate
17 the claim.

18 (2) The board may use the services of neutral third party experts
19 to conduct on-site investigations, make recommendations to the board,
20 and assist the board in investigating and mediating claims.

21 (3) After the investigation is complete, the board shall provide
22 the parties with notification of the findings of the investigation.
23 If the parties do not provide the board with written notification
24 within 14 days after receipt of the findings that the parties have
25 resolved the claim, the board shall mediate the claim.

26 (4) The mediation shall be conducted by a panel of three members
27 of the board in accordance with rules adopted by the board.

28 (5) All proceedings of the mediation conference, including any
29 statement made by any party, attorney or other participant, shall be
30 privileged and not reported, recorded, placed in evidence, used for
31 impeachment, made known to a court or jury, or construed for any
32 purpose as an admission. No party shall be bound by anything done or
33 said at the mediation conference unless a settlement is reached, in
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1 which event the agreement upon a settlement shall be reduced to
2 writing and shall be binding upon all parties to that agreement.

3 (6) At the conclusion of the mediation the board shall provide a
4 written notice of the completion of mediation to the parties. The
5 notice shall include a statement of the results of the mediation and a
6 copy of any written settlement agreement between the parties. If the
7 parties did not reach an agreement, the notice shall include a
8 statement that the parties may pursue any other right or remedy
9 provided by statutory or common law.

10
11 NEW SECTION. Sec. 11. A new section is added to chapter 43.10 RCW
12 to read as follows:

13 (1) The board shall maintain and make available to the office of
14 consumer education for home construction a record of all claims filed
15 with the board against construction professionals under this chapter
16 and the outcomes of those claims.

17 (2) The office of consumer education for home construction shall
18 compile a summary of the claims into a report for the legislature as
19 required under section 1 of this act.

20
21 NEW SECTION. Sec. 12. A new section is added to chapter 64.50 RCW
22 to read as follows:

23 The provisions of RCW 64.50.020 do not apply to a claim filed with
24 the home construction board under sections 8 through 10 of this act.

25

26

27 **PART II. RESIDENTIAL REAL PROPERTY WARRANTIES**

28

29 NEW SECTION. Sec. 13. A new section is added to chapter 64.50
30 RCW to read as follows:

31 (1) The legislature intends by this section to modify the common
32 law implied warranty of habitability to provide that this warranty may
33 not be contractually disclaimed, waived, modified, or limited.

34

1 (2) The common law implied warranty of habitability may not be
2 disclaimed, waived, modified, or limited by contractual agreement. A
3 provision of any contract for the purchase or sale of newly
4 constructed residential property that purports to disclaim, waive,
5 modify, or limit the implied warranty of habitability is void and
6 unenforceable.

7 (3) Damages awarded for a breach of the implied warranty of
8 habitability are the cost of repairs. However, if it is established
9 that the cost of repairs is clearly disproportionate to the loss in
10 market value caused by the breach, damages are limited to the loss in
11 market value.

12
13 NEW SECTION. **Sec. 14.** A new section is added to chapter 64.50
14 RCW to read as follows:

15 (1) A construction professional involved in the construction of
16 new residential real property, or the substantial remodel of existing
17 residential real property, warrants that the work, and any part
18 thereof, will be suitable for the ordinary uses of real property of
19 its type and that the work, and any part thereof, will be:

- 20 (a) Free from defective materials;
- 21 (b) Constructed in accordance with sound engineering and
22 construction standards;
- 23 (c) Constructed in a workmanlike manner; and
- 24 (d) Constructed in compliance with all laws then applicable to the
25 work.

26 (2) If a construction professional breaches a warranty arising
27 under this section and the breach results in damage to any portion of
28 the residential real property, the current owner of the residential
29 real property must file a claim with the home construction board
30 against the construction professional prior to commencing an action
31 for breach of a warranty.

32 (3) Absence of privity of contract between the owner and the
33 construction professional is not a defense to the enforcement of a
34 warranty arising under this section.

1 (4) In a proceeding for breach of a warranty arising under this
2 section, the plaintiff must show that the alleged breach has adversely
3 affected or will adversely affect the performance of that portion of
4 the property alleged to be in breach. To establish an adverse effect,
5 the person alleging the breach is not required to prove that the
6 breach renders the property unfit for occupancy. As used in this
7 subsection, an "adverse effect" must be more than technical and must
8 be significant to a reasonable person.

9 (5) Proof of breach of a warranty arising under this section is
10 not proof of damages. Damages awarded for a breach of a warranty
11 arising under this section are the cost of repairs. However, if it is
12 established that the cost of repairs is clearly disproportionate to
13 the loss in market value caused by the breach, damages are limited to
14 the loss in market value.

15 (6)(a)(i) Except as provided in (a)(ii) of this subsection, a
16 proceeding for breach of a warranty arising under this section must be
17 commenced within three years after the cause of action accrues.

18 (ii) A cause of action for breach of a warranty arising under this
19 section that is based on a latent structural defect to the foundation
20 component of the residential real property must be commenced within
21 four years after the cause of action accrues.

22 (iii) The periods provided in this subsection (6)(a) may not be
23 reduced by either oral or written agreement, or through the use of
24 contractual claims or notice procedures that require the filing or
25 service of any claim or notice prior to the expiration of the period
26 specified in this section.

27 (b) A cause of action for breach of a warranty arising under this
28 section accrues, regardless of the owner's lack of knowledge of the
29 breach:

30 (i) In the case of the purchase of newly constructed residential
31 real property, on the date the initial owner enters into possession of
32 the property; or

33 (ii) In the case of the substantial remodel of existing
34 residential real property, on the date of substantial completion of

1 construction or termination of the construction project, whichever is
2 later.

3 (7) The warranties provided under this section are in addition to
4 any other rights or remedies available under statutory law or common
5 law or provided for under contract.

6 (8) This section does not apply to condominiums subject to chapter
7 64.34 RCW.

8 (9) An action for breach of a warranty under this section that is
9 brought after compliance with sections 8 through 10 of this act is
10 subject to any requirements for mandatory arbitration imposed under
11 chapter 7.06 RCW or state or local court rules.

12 (10) This section applies to new residential real property
13 construction and substantial remodels of residential real property
14 that are commenced on or after January 1, 2010.

15 (11) For the purposes of this section:

16 (a) "Construction professional" means a builder, builder-vendor,
17 contractor, subcontractor, or inspector, performing or furnishing the
18 design, supervision, inspection, construction, or observation of the
19 construction, of any improvement to residential real property, whether
20 operating as a sole proprietor, partnership, corporation, or other
21 business entity. "Construction professional" does not include a
22 supplier of materials who has otherwise had no involvement in
23 performing or furnishing the design, supervision, inspection,
24 construction, or observation of the construction, of any improvement
25 to residential real property. "Construction professional" does not
26 include an inspector who is an agent or employee of a local government
27 and acting in his or her official capacity as an inspector.

28 (b) "Residential real property" means a single-family home, a
29 duplex, a triplex, or a quadraplex.

30 (c) "Substantial completion of construction" means the state of
31 completion reached when an improvement upon real property may be used
32 or occupied for its intended use.

33

34

1 **PART III. CONTRACTOR REGISTRATION AND WORKER CERTIFICATION**

2
3 NEW SECTION. **Sec. 15.** (1) The legislature finds that there is
4 inadequate protection for consumers in the area of residential
5 construction. The legislature further finds that a significant amount
6 of the problems in the construction of new residential real property,
7 or the substantial remodel of existing residential real property,
8 pertain to water intrusion and unstable foundations and develop from
9 poor installation of roofing, siding, framing, foundations, doors, and
10 windows. The legislature recognizes that it is important to assure
11 consumers that those doing construction work are properly trained.
12 The legislature, therefore, intends to establish a worker
13 certification requirement for those doing construction work in the
14 areas of roofing, siding, framing, foundations, doors, and windows.

15 (2) The department of labor and industries shall contract for
16 consultant services to develop recommendations to the legislature on
17 the education, experience, and examination requirements of the program
18 to certify workers engaged in the installation of roofing, siding,
19 framing, foundations, doors, and windows. In developing the
20 recommendations, the consultant and the department shall closely
21 involve and consult with stakeholders. The recommendations must be
22 submitted to the legislature by November 1, 2009.

23 (3) This section expires December 31, 2009.
24

25 **Sec. 16.** RCW 18.27.030 and 2008 c 120 s 1 are each amended to
26 read as follows:

27 (1) An applicant for registration as a contractor shall submit an
28 application under oath upon a form to be prescribed by the director
29 and which shall include the following information pertaining to the
30 applicant:

31 (a) Employer social security number.

32 (b) Unified business identifier number.

33 (c) Evidence of workers' compensation coverage for the applicant's
34 employees working in Washington, as follows:

1 (i) The applicant's industrial insurance account number issued by
2 the department;

3 (ii) The applicant's self-insurer number issued by the department;
4 or

5 (iii) For applicants domiciled in a state or province of Canada
6 subject to an agreement entered into under RCW 51.12.120(7), as
7 permitted by the agreement, filing a certificate of coverage issued by
8 the agency that administers the workers' compensation law in the
9 applicant's state or province of domicile certifying that the
10 applicant has secured the payment of compensation under the other
11 state's or province's workers' compensation law.

12 (d) Employment security department number.

13 (e) Unified business identifier (UBI) account number may be
14 substituted for the information required by (c) and (d) of this
15 subsection if the applicant will not employ employees in Washington.

16 (f) Type of contracting activity, whether a general or a specialty
17 contractor and if the latter, the type of specialty.

18 (g) Type of work performed, whether residential, commercial, or
19 both.

20 (h) The name ((and)), address, social security number, date of
21 birth, and driver's license number of each partner if the applicant is
22 a firm or partnership, or the name ((and)), address, social security
23 number, date of birth, and driver's license number of the owner if the
24 applicant is an individual proprietorship, or the name ((and)),
25 address, social security number, date of birth, and driver's license
26 number of the corporate officers and statutory agent, if any, if the
27 applicant is a corporation, or the name ((and)), address, social
28 security number, date of birth, and driver's license number of all
29 members of other business entities. The information contained in such
30 application is a matter of public record and open to public
31 inspection.

32 (i) The registration numbers and unified business identifier
33 account numbers of previously or currently registered businesses
34 involving the same owner, principal, or officer as the applicant.

1 (j) Disclosure of any bankruptcy proceedings filed by or against
2 the applicant.

3 (k) Information about any construction licenses, certifications,
4 or registrations that have been issued to the applicant by other
5 states. The applicant shall also provide details about any denials,
6 suspensions, revocations, or any enforcement actions related to
7 construction against the applicant by other states.

8 (2) The department may verify the workers' compensation coverage
9 information provided by the applicant under subsection (1)(c) of this
10 section, including but not limited to information regarding the
11 coverage of an individual employee of the applicant. If coverage is
12 provided under the laws of another state, the department may notify
13 the other state that the applicant is employing employees in
14 Washington.

15 (3)(a) The department shall deny an application for registration
16 if: (i) The applicant has been previously performing work subject to
17 this chapter as a sole proprietor, partnership, corporation, or other
18 entity and the department has notice that the applicant has an
19 unsatisfied final judgment against him or her in an action based on
20 work performed subject to this chapter or the applicant owes the
21 department money for penalties assessed or fees due under this chapter
22 as a result of a final judgment; (ii) the applicant was an owner,
23 principal, or officer of a partnership, corporation, or other entity
24 that either has an unsatisfied final judgment against it in an action
25 that was incurred for work performed subject to this chapter or owes
26 the department money for penalties assessed or fees due under this
27 chapter as a result of a final judgment; (iii) the applicant does not
28 have a valid unified business identifier number; (iv) the department
29 determines that the applicant has falsified information on the
30 application, unless the error was inadvertent; ~~((v))~~ (v) the
31 applicant does not have an active and valid certificate of
32 registration with the department of revenue; or (vi) the department
33 has determined that a different state has taken enforcement action

34

1 against the applicant for activities that would be a violation of this
2 chapter if they had occurred in Washington state.

3 (b) The department shall suspend an active registration if: (i)
4 The department has determined that the registrant has an unsatisfied
5 final judgment against it for work within the scope of this chapter;
6 (ii) the department has determined that the registrant is a sole
7 proprietor or an owner, principal, or officer of a registered
8 contractor that has an unsatisfied final judgment against it for work
9 within the scope of this chapter; (iii) the registrant does not
10 maintain a valid unified business identifier number; (iv) the
11 department has determined that the registrant falsified information on
12 the application, unless the error was inadvertent; (~~(v)~~) (v) the
13 registrant does not have an active and valid certificate of
14 registration with the department of revenue; or (vi) the department
15 has determined that a different state has taken enforcement action
16 against the registrant for activities that would be a violation of
17 this chapter if they had occurred in Washington state.

18 (c) The department may suspend an active registration if the
19 department has determined that an owner, principal, partner, or
20 officer of the registrant was an owner, principal, or officer of a
21 previous partnership, corporation, or other entity that has an
22 unsatisfied final judgment against it.

23 (4) The department shall not deny an application or suspend a
24 registration because of an unsatisfied final judgment if the
25 applicant's or registrant's unsatisfied final judgment was determined
26 by the director to be the result of the fraud or negligence of another
27 party.

28
29 NEW SECTION. Sec. 17. A new section is added to chapter 18.27
30 RCW to read as follows:

31 A registered contractor, by or against whom a petition in
32 bankruptcy has been filed, shall notify the department of the
33 proceedings in bankruptcy, including the identity and location of the
34

1 court in which the proceedings are pending, within ten days of the
2 filing.

3
4 NEW SECTION. **Sec. 18.** Sections 5 through 12 of this act take
5 effect January 1, 2010.

6
7 NEW SECTION. **Sec. 19.** Part headings used in this act are not any
8 part of the law."

9
10 Correct the title.

11

EFFECT: The striking amendment makes the following changes:

A. Creates a seven-member Home Construction Board (Board) within the Office of Consumer Education for Home Construction (OCEHC) to investigate and mediate construction defect claims. Allows the Board to use the services of neutral third parties to investigate, assess, and mediate claims.

Creates notice and opportunity to cure procedures when a homeowner files a claim with the Board.

Requires the board to investigate and mediate a claim that has not been settled by the parties.

Allows the Board to impose a fee of up to \$100 for claims filed with the Board.

Requires a homeowner to file a claim with the Board prior to commencing a lawsuit alleging a construction defect.

B. Creates an account to fund the Office of Consumer Education for Home Construction (Office) and requires the Department of Labor and Industries to charge contractors a \$100 fee to be deposited in the account. Requires the Office to examine issues involved in establishing a recovery fund to provide compensation to residential real property homeowners through a claim filing process.

C. Limits damages recoverable under the common law implied warranty of habitability to the cost of repairs, or if those are clearly disproportionate to the loss in market value, limits damages to the loss in market value.

51

D. Provides that the statutory warranties created by the bill apply to work on all aspects of the residential real property and are not limited to the foundation, framing, siding, roofing, windows and doors.

E. Removes engineers from the definition of "construction professional" and exempts inspectors who are agents or employees of local government acting in their official capacity as inspectors.

F. Requires the Department of Labor and Industries to contract for consultant services to develop recommendations to the Legislature on certification requirements for workers who install roofing, siding, framing, foundations, doors, and windows.

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